

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 20:015

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 20:015 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 20:015:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Cara Stewart, Health Law Fellow	Kentucky Equal Justice Center
Kathy Adams, Director of Public Policy	Children's Alliance
Teresa C. James, Commissioner	Department for Community Based Services (DCBS)

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 20:015:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Lee Guice, Director	Department for Medicaid Services, Division of Policy and Operations
Marchetta Carmicle, Manager	Department for Medicaid Services, Division of Policy and Operations, Eligibility Policy Branch
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: TANF

(a) Comment: Teresa C. James, Commissioner of the Department for Community Based Services stated the following:

"Language in Section 1(2) is problematic because a joint application with TANF is not currently possible. Two systems are currently in use. The programs have been delinked."

(b) Response: The Department for Medicaid Services (DMS) is deleting Section 1(2) via an "amended after comments" administrative regulation.

(2) Subject: Suggested changes to language used throughout regulation

(a) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Page 3, line 22: Recommend that 'private child caring institution' be changed to 'private child caring facility' as this term is defined by statute and is consistent with our recommendation in 907 KAR 20:005.

(d) Response: DMS is revising the language as suggested in an "amended after comments" administrative regulation.

(e) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

Page 4, line 2: Recommend the phrase 'representative of the' be added before the word 'Institution' and the word 'Institution' be replaced with 'facility' so that it reads, "Representative of the facility in which the child is placed."

(f) Response: DMS is revising the language as suggested in an "amended after comments" administrative regulation.

(g) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

Page 5, line 21: Recommend adding a colon or not striking through the colon after the deleted phrase ~~[Time frame exceptions]~~."

(h) Response: DMS is inserting a colon as recommended in an "amended after comments" administrative regulation.

(i) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Page 4 to 6: Section 4 – Recommend that language be added to clarify what happens if DCBS staff fail to meet the timeframes established in Section 4."

(j) Response: There are no consequences for failing to meet the timeframes.

(k) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Page 6, line 9 and 10: Recommend the word 'their' be added after the word 'update' so that the sentence reads, '....to register to vote or update their current voter registration....'"

(l) Response: DMS is revising the language as follows in an "amended after comments" administrative regulation:

“Section 6. Voter Registration. (1) An applicant or recipient [~~meeting all of the following criteria~~]-shall be provided the opportunity at the local Department for Community Based Services~~[Social Insurance]~~ office to complete an application to register to vote or update the applicant's or recipient's~~[his]~~ current voter registration if the applicant or recipient is:”

(m) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

“Page 6, line 12: (b) is confusing in regards to ‘or if a change of address is reported’. This phrase does not seem to ‘go with’ the first part of the sentence. Please clarify who the ‘change of address is reported to’ and who can make the report.”

(n) Response: DMS is revising the language as follows in an “amended after comments” administrative regulation:

“(b) [~~Be~~] Present in the office at the time of the interview or when~~[if]~~ a change of address is reported; and.”

(o) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

“Page 7, line 12 to Page 8 line 12: The language in Section 7 is used in many of the DMS regulations being commented on. Of specific concern in this language is the reference to ‘children in foster care’ (1)(a)1. and the exclusion of individuals between the ages of 19 and 26 who were formerly in foster care and receiving benefits at the time that they ‘aged out of foster care’ in (1)(b)2. Please clarify the phrase ‘aged out of foster care.’ Additionally concerning is the language in (2)(a) ‘a child under the age of nineteen years, excluding children in foster care.’ As indicated previously in our comments on these regulations, there is great concern, based upon the definition of ‘child’ set forth in 907 KAR 20:001, that foster children (recipients of IV-E benefits) currently only eligible for Medicaid coverage until they turn 18, will not again be eligible for Medicaid coverage under ACA and 907 KAR 10:075 until they turn 19. This would mean there is a year that a foster child, age 18 or over on extended commitment, or a former foster child that is age 18, would not be covered by Medicaid until they turn 19. Simply stated, it appears that there will be a year (when they are 18 years old) that a foster child or former foster child will not be covered by Medicaid.”

(d) Response: Aged out of foster care means the individual reached the age at which their age exceeds the foster care eligibility age threshold.

During their eighteenth year, such children will be covered by the Kentucky Children's Health Insurance Premium (KCHIP) program rather than by the Medicaid program.

(2) Subject: Changes to be Congruent with Affordable Care Act Provision

(a) Comment: Teresa C. James, Commissioner of the Department for Community Based Services, stated the following:

“In Section 2(1)(a)1, DCBS suggests that the word ‘form’ be deleted” and “in Section 2(1)(a)2, DCBS suggests that this provision be rewritten as “2. The application has been received by DCBS”. For both of these Teresa C. James commented, “This change would make the application process more consistent with the Affordable Care Act’s provisions supporting ‘no wrong door’.”

(b) Response: Via an “amended after comments” administrative regulation, DMS is deleting the word “form” as recommended. Additionally, DMS is revising the language, in an “amended after comments” administrative regulation, regarding receipt of the application as recommended.

(c) Comment: Teresa C. James, Commissioner of the Department for Community Based Services, also stated, “In Section 2(3), DCBS recommends that the applicant be advised that s/he may also apply by phone, another option made available through the Affordable Care Act’s provisions supporting ‘no wrong door’ and the new contact center.”

(d) Response: DMS is revising the language as follows in an “amended after comments” administrative regulation:

“(3) If ~~an[the]~~ applicant is unable to come to the office to apply, the applicant:
(a) Shall be advised that the applicant may apply via telephone; or
(b)[he] May designate an authorized representative to apply for the applicant[him] or request a home visit to complete the application process.”

(e) Comment: Also pertaining to this subject Teresa C. James stated, “Section 4 is incongruent with the family support business model implemented during the past year, which was subsequent to the Affordable Care Act’s provisions supporting ‘no wrong door’. No longer is case processing county specific.”

(f) Response: Via an “amended after comments” administrative regulation, DMS is deleting the provisions of Section 4.

(g) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated, “Page 7, line 2 to 11: Recommend that clarification regarding how a person applies to vote at the DCBS office and who is responsible for ensuring the form gets to the State Board of Elections.”

(h) Response: DMS prefers to not delineate the process in administrative regulation as the process could change and DMS does not think it necessary to state the process in an administrative regulation.

(3) Subject: Clarification of Whom Can Sign for a Child’s Medicaid Application

(a) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Page 3, line 22 to Page 4, line 2: Recommend clarification of the intent. Can an 'institution where a child is placed' sign the child's application for Medicaid? If the child is in foster care, currently the practice is that neither the private child caring facility nor a representative of the facility can sign a Medicaid application on behalf of a foster child. Are there instances where a private child caring facility can sign a child's Medicaid application?"

(b) Response: The policy as stated in the administrative regulation has not changed – a representative of the facility/agency may sign an application.

(4) Subject: Eligibility of Medicaid

(a) Comment: Cara Stewart, Health Law Fellow with Kentucky Equal Justice stated:

"Section 7. Applicability d (2): We are concerned that this section leaves out the possible Kentuckians 65 and above who are not currently eligible for Medicare. Leaving those Kentuckians out of this section would leave that population without appropriate health care options. Kentuckians eligible for Medicare are not eligible for this Medicaid Expansion, but the qualification of 64 and younger is not based on that age, but rather the presumption of Medicare eligibility. We request you clarify that those persons ineligible for Medicare but aged 65 or older and otherwise eligible are included in this expansion would be eligible for Medicaid under these new regulations. The same information is potentially found in Section 5: Technical Eligibility Requirements, that "An aged individual shall be at least sixty-five (65) years of age" and this would keep Section 12 consistent with that language including those persons.

Suggested language:

(d) Any adult with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and
2. Is not otherwise eligible for Medicaid or Medicare benefits; or."

(b) Response: The Affordable Care Act and the Centers for Medicare and Medicaid Services (CMS) do not grant Medicaid eligibility for individuals sixty-five (65) and over under the new eligibility categories – "MAGI" and the "Medicaid expansion" group. No federal funding is provided for individuals sixty-five (65) and over under the new eligibility categories. The eligibility rules for individuals sixty-five (65) and over remain unchanged by federal law and by CMS. The relevant codified language appears in 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

(5) Subject: Applicability Section

(a) and (b) Comment and Response: As DMS is revising "applicability" section of the

other eligibility administrative regulations to replace existing detailed provisions with references to the relevant other administrative regulations, DMS is revising (via an “amended after comments” administrative regulation, this administrative regulation accordingly.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 20:015 and is amending the administrative regulation as follows:

Page 2

Section 1(2) and Section 1(3)(a)

Lines 11 through 15

After “(2)”, delete the remainder of the subsection in its entirety and renumber Section 1(3)(a) by deleting “(3)”.

Page 2

Section 2(1)(a)1.

Line 23

After “application”, delete “form”.

Page 3

Section 2(1)(a)2.

Line 2

After “received”, delete “at the appropriate office”.

Page 3

Section 2(3)

Line 7

After “the applicant”, insert a colon, a return, and the following:

(a) Shall be advised that the applicant may apply via telephone; or

(b)

Page 3

Section 3(2)

Line 23

After “caring”, insert “facility”.

Delete “institution”.

Page 4

Section 3(2)(b)

Line 2

After “(b)”, insert “Representative of the facility”.

After “[~~the~~]”, delete “Institution”.

Page 4

Section 4 and Section 5 Title

Line 3 through

Page 5

Line 15

After “Section 4.”, delete the remainder of Section 4 in its entirety and delete “Section 5.”

Page 6

Section 6, Title

Line 7

After “Section”, insert “5.”.

Delete “6.”.

Page 6

Section 6(1)

Line 9

After “update”, insert “the applicant’s or recipient’s”.

Page 6

Section 6(1)(b)

Line 12

After “or”, insert “when”.

Delete “if”.

Page 7

Section 7, Title

Line 12

After “Section”, insert “6.”.

Delete “7.”.

Page 7

Section 7(1)

Line 12

After “Applicability.”, delete “(1)”.

Page 7

Section 7(1)(a)

Line 14

Renumber this paragraph by inserting “(1)” and deleting “(a)”.

Page 7

Section 7(1)(a)1, 2, and 3

Lines 15, 16, and 17

Renumber these three subparagraphs by inserting “(a)”, “(b)”, and “(c)”, respectively, and by deleting “1.”, “2.”, and “3.”, respectively.

Page 7

Section 7(1)(b)

Line 18

Renumber this paragraph by inserting “(2)” and deleting “(b)”.

Page 7

Section 7(1)(b) and (1)(b)1

Lines 18 and 19

After “individuals”, delete the colon, the return, and “1.”.

Line 19

After “determined”, insert a colon, a return and “(a)”.

Page 7

Section 7(1)(b)1

Line 20

After “standard”, insert “pursuant to 907 KAR 20:100”.

After “or”, insert a return and “(b) Pursuant to 907 KAR 20:075”.

Page 7

Section 7(1)(b)2 and Section 7(2)

Line 21 through

Page 8

Line 12

Delete Section 7(1)(b)2 and Section 7(2) in their entirety.